# Public Prosecutor v Ho Sek Kong

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 45–25 OF 2001
ABDULL HAMID EMBONG J
28 NOVEMBER 2005

*Evidence — Confession — Admissibility of confession — Statement by accused person — Previously lied to the police — Credibility as witness — Whether statement of accused was a confession — Test for what amount to confession — Evidence Act 1950 s 17(2)*

The accused is charged with the murder of his mother. The deceased body was seen by SP4 lying in a pool of blood. He then immediately left the room to look for someone. Then he saw the accused coming out of the bathroom, clad only with a towel. The accused shouted something at him which he could not remember. The accused then asked him to sit, and told him that he (accused) had done something to the deceased but he had not intended to do it. The accused was then alone in the house. Not long after the accused left the house; SP4 followed him. SP4 asked the accused what should be done and the accused told him not to do anything and to regard that he (SP4) had not seen anything. SP4 was also initially arrested as a suspect in this murder case. He admitted in court that he had lied to the police about the killing in order to protect the accused. The prosecution's case rested solely on his confession and the circumstantial evidence supporting that confession in making out a prima facie case against the accused.

**Held**, finding the accused guilty and sentencing him to death:

(1) This court's assessment on SP4 was that he was truthful in his answers particularly under cross examination, and a credible witness in spite of his admission that he had previously lied to the police. It was not the quantity of circumstantial evidence that the court looked at, rather the quality of that evidence (see paras 6–8).

(2) The statement uttered by the accused to SP4 is not merely that he had a knowledge that an offence had been committed but, a direct acknowledgement of his guilt. In other words, his statement can be classified as a plenary confession. Looking at that statement as a whole and without considering any other extrinsic facts, it suggested an inference that the accused had committed this murder, thus falling within the clear terms of s 17(2) of the Evidence Act 1950 (see para 11).

(3) The confession was voluntarily made to SP4. There was no allegation that the accused had uttered it due to any inducement. The test for what amounted to a confession would therefore be that the statement would relate the accused in some way to the offence for which he is charged. Besides the confession of the accused, there were also circumstantial evidence, which if considered together with that confession point irresistibly to the guilt of the accused in perpetrating this murder (see paras 13–15).

(4) No motive was shown by the prosecution for this needless murder. However in law, motive is not an essential ingredient for this offence (see para 19); *Dato' Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 followed. There was no evidence of any provocation in the instant case. As such, upon a maximum evaluation of the evidence, the prosecution had successfully proven a *prima facie* case against the accused which this court had considered following the principle laid down in the recent Federal Court case of *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 (see para 22).

**[Bahasa Malaysia summary**

Tertuduh didakwa dengan pembunuhan ibunya. Mayat si mati ditemui SP4 terlantar berlumuran darah. Beliau terus meninggalkan bilik tersebut untuk mencari sesiapa juga. Kemudiannya beliau telah melihat tertuduh keluar dari bilik mandi, ditutupi hanya dengan tuala. Tertuduh menjerit sesuatu kepadanya tetapi tidak diingatinya. Tertuduh kemudiannya menyuruhnya duduk dan memberitahunya bahawa beliau (tertuduh) telah melakukan sesuatu kepada si mati dan bukan niatnya. Tertuduh berseorangan di rumah pada masa itu. Sejurus kemudian tertuduh meninggalkan rumah tersebut; SP4 mengikutinya. SP4 bertanya tertuduh apa yang patut dilakukan dan diberitahu tertuduh supaya jangan buat apa-apa dan bahawa beliau (SP4) tidak melihat apa-apa. SP4 pada mulanya ditangkap sebagai seorang yang disyaki di dalam kes pembunuhan ini. Beliau mengaku di mahkamah bahawa beliau telah membohong kepada polis berhubungan dengan pembunuhan itu untuk melindungi tertuduh. Kes pendakwa raya berdasarkan semata-mata atas pengakuannya untuk satu kes prima facie terhadap tertuduh.]

**Diputuskan**, mendapati tertuduh bersalah dan menjatuhkan hukuman mati:

(1) Penilaian mahkamah ini ke atas SP4 ialah beliau setia dalam jawapannya terutama semasa pemeriksaan balas, dan seorang saksi yang boleh dipercayai walaupun beliau telah mengaku bahawa beliau pernah bohong kepada polis. Ia bukanlah kuantiti keterangan berdasarkan keadaan yang mahkamah ini cari, tetapi mutu keterangan tersebut (lihat perenggan 6–8).

(2) Pernyataan yang diungkapkan oleh tertuduh kepada SP4 bukannya setakat beliau ketahui bahawa satu kesalahan telah dilakukannya tetapi, satu pengakuan langsung kebersalahannya. Dalam ayat yang lain, pernyataannya boleh diklasifikasikan sebagai pengakuan mutlak. Jika dilihat pernyataannya secara keseluruhan dan tanpa mengambil kira sebarang fakta-fakta luaran, ia mencadangkan satu inferens bahawa tertuduh melakukan pembunuhan ini, dengan itu ia jelas jatuh ke atas s 17(2) Akta Keterangan (lihat perenggan 11).

(3) Pengakuan yang dibuat kepada SP4 adalah secara sukarela. Tiada sebarang tuduhan bahawa tertuduh mengungkapkannya disebabkan dorongan. Ujian sama ada sesuatu ungkapan itu satu pengakuan adalah sama ada pernyataan itu mengaitkan tertuduh dalam apa jua cara dengan kesalahan yang didakwa. Selain daripada pengakuan tertuduh, terdapat juga keterangan berdasarkan

keadaan, jika dipertimbangkan bersama-sama dengan pengakuan, menunjukkan salah laku tertuduh dalam melakukan pembunuhan ini (lihat perenggan 13–15).

(4) Pendakwa raya tidak menunjukkan sebarang motif pembunuhan ini. Akan tetapi mengikut undang-undang, motif bukannya satu ramuan yang perlu untuk kesalahan ini (lihat perenggan 19); *Dato' Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 diikut. Tiada sebarang bukti yang menunjukkan terdapat tindak balas yang disebabkan kemarahan. Dengan ini, setelah menilai kesemua keterangan, pihak pendakwa telah berjaya membuktikan satu kes prima facie terhadap tertuduh, Mahkamah ini telah mempertimbangkan mengikuti prinsip yang ditetapkan oleh Mahkamah Persekutuan di dalam kes *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 (lihat perenggan 22).

**Notes**

For cases on admissibility of confession, see 7(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 643–648.

**Cases referred to**

*Alcontara a/l Ambrose Anthony v PP* [1966] 1 MLJ 209 (refd)
*Anandagoda v The Queen* [1962] 1 WLR 817 (refd)
*Balachandran v PP* [2005] 2 MLJ 301 (folld)
*Chan Chwen Kong v PP* [1962] MLJ 307 (refd)
*Dato' Mokhtar bin Hashim & Anor v PP* [1983] 2 MLJ 232 (folld)
*Lemanit v PP* [1965] 2 MLJ 26 (refd)
*Liew Kon Kiow v PP* [1948–49] MLJ Supp 150 (refd)
*Mat v PP* [1963] MLJ 263 (refd)
*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169 (refd)
*PP v Lin Lian Chen* [1992] 2 MLJ 561 (refd)
*State v Shaik Mazhar* AIR 2001 SC 2427 (refd)
*Wong Swee Chin v PP* [1981] 1 MLJ 212 (refd)

**Legislation referred to**

Criminal Procedure Code s 277
Evidence Act 1950 s 17(2)
Penal Code ss 300, 302

*TPR Mohamad Abazafree bin Mohd Abbas (Public Prosecutor, Attorney-General's Chambers) for the prosecution.*
*Kitson Foong (Kitson Foong & Associates) for the accused.*

**Abdull Hamid Embong J:**

**[1]** The accused is charged with the murder of his mother on the following amended charge:

> Bahawa kamu pada 5 Oktober 2000, di antara jam 4.00 petang hingga 6:30 petang di rumah beralamat Blok 44-6-11, Taman Naga Emas, Jalan 4/140, Salak Selatan, dalam

daerah Brickfields, dalam Wilayah Persekutuan Kuala Lumpur, telah melakukan pembunuhan dengan menyebabkan kematian ke atas CHEAH SEAW MENG (KP: 481019-10-5356). Oleh yang demikian kamu telah melalukan satu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan.

**[2]** The evidence led by the prosecution is simple and straightforward and may be shortly stated thus.

**[3]** On the evening of 5 October 2000, just after 6pm the deceased body was seen by SP4 lying in a pool of blood, on the floor, next to her bed in her bedroom at her apartment house at Blok 44-6-11, Taman Naga Emas, Salak Selatan. That house was then occupied by the deceased, her son Ho Sek Kong (the accused), her adopted son Lee Loy Fatt, her daughter, Ho Kwai Ying (SP3) and her boyfriend Lee Lai. SP4, Wan Kwang Woh who was then the boyfriend of 5P3 also stayed over at that house on certain nights and had the keys to the house.

**[4]** At 6pm on 5 October 2000, SP4 went back to his house at 103 Kampung Kerayung, Off Jalan Lapangan Terbang Lama, Kuala Lumpur. After that he left home to go over to SP3's house (ie deceased's house). When he got there he found the wooden front door opened and the grille to it unlocked. When he went in he saw blood spluttered on the walls of the deceased's bedroom and her body lying on the floor next to the bed. He approached the body to take a look. He then immediately left the room to look for someone. Then he saw the accused coming out of the bathroom, clad only with a towel. The accused shouted something at him which he could not remember. The accused then asked him to sit, and told him that he (accused) had done something to the deceased but he had not intended to do it. SP4 said he understood what the accused meant. When SP4 asked the accused why he did it, the accused answered that he had not intended to do it. The accused was then alone in the house. The accused then asked SP4 to calm down and not to tell about the incidence to his sister, SP3. The accused then went into his room to put on his clothes. Not long after the accused left the house; SP4 followed him. SP4 asked the accused what should be done and the accused told him not to do anything and to regard that he (SP4) had not seen anything. They then went into the lift. Nothing was said there as there were other people. When they reached the ground, SP4 again asked the accused what to do, and the accused asked SP4 to leave the place. SP4 then went back up to the house to fetch his helmet. He then left the house after locking up the grille. When he got to his house in Kerayung he called SP3 but there was no answer. He then left to fetch SP3 from her work place. When he met her, he saw SP3 in a state of panic. SP3 told SP4 that the accused had called her and told her that her mother was covered with blood. They then immediately went home and saw may people there whom he could not recognise.

**[5]** SP3 in her evidence stated that at 5pm that day she had called home and spoke to the accused. When she asked for her mother the accused told her that she was sleeping. At 7pm, the same day, she again called home and spoke to the accused. This time the accused told SP3 that the deceased had vomited a lot of blood. This evidence was not disputed in cross examination and as such accepted by the court as a true narration of what had transpired in their conversation. In *Wong Swee Chin v*

*Public Prosecutor* [1981] 1 MLJ 212, the Federal Court held that 'there is a general rule that failure to cross examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony'. When SP3 arrived home she saw a lot of blood in the guest room of the house. The accused told her, on being questioned, that he did not know what happened.

**[6]** SP4 was also initially arrested as a suspect in this murder case. He admitted in court that he had lied to the police about the killing in order to protect the accused, and that the version he related to the court was truly what had transpired. SP4 was however not cross examined on what specifically his lie was to the police. This court's assessment on SP4 was that he was truthful in his answers particularly under cross examination, and I found him to be a credible witness in spite of his admission that he had previously lied to the police. As such his narration of the events on that fateful evening, in particular on what the accused said and the conduct of the accused was accepted by this court as the truth.

**[7]** The prosecution's case rested solely on his confession and the circumstantial evidence supporting that confession in making out a prima facie case against the accused.

**[8]** It is trite law that for such evidence to operate against the accused, the prosecution bears a heavy onus and that that evidence must irresistibly points to his guilt (see *Public Prosecutor v Lin Lian Chen* [1992] 2 MLJ 561). It is not the quantity of circumstantial evidence that the court looks at, rather the quality of that evidence. Central to the set of circumstances pointing to the guilt of the accused was his confession to SP4 when the later confronted the situation upon recovery of the deceased's body. SP4 had maintained even under lengthy cross examination that the accused had admitted to killing his mother but had not intended to murder her (see p 20 of the notes of evidence). This court had admitted this confession under s 17(2) of the Evidence Act 1950 which states that:

> (2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

**[9]** Under this section an inference can be made by the court that he had committed the crime because an inference can amount to a confession. In *Liew Kon Kiow v Public Prosecutor* [1948–49] MLJ Supp 150, it was stated by Spenser Wilkinson J that:

> In deciding what amounts to a confession and what does not, very little assistance can be derived from the English authorities because statements of any kind made to the police in England by accused persons are admissible provided they have not been obtained by improper means. The Indian authorities are of no assistance because sub-s (2) of our s 17 does not form part of the Indian Evidence Act, so that in India the word 'confession' has been held to bear its ordinary everyday meaning of an admission of guilt.

**[10]** The learned judge also went on to explain the phrase 'suggesting the inference' by stating:

> It is quite clear from the words 'or suggesting the inference' that something short of a full admission of guilt by the accused may yet be a 'confession' within the definition. Whether, therefore, any particular statement amounts to a confession or not must depend upon the particular wording of the statement, the circumstances in which it is made and the charge to which the statement directly or indirectly refers.
>
> It seems to us that the words of the statement here in question, although innocent enough in themselves, when taken in conjunction with all the surrounding circumstances might be said to suggest the inference that the appellant committed the offence.

**[11]** It could therefore, following the general rule on admissions, be proved against the accused as the maker of that statement as a direct acknowledgment of his guilt (see *Sarkar on Evidence* (15th Ed, Reprint 2003) at p 423). According to *Sarkar*'s commentary, a confession may be defined as an admission of the offence by a person charged with the offence, which does not contain anything self-exculpatory. The statement uttered by the accused to SP4 is not merely that he had a knowledge that an offence had been committed but, in my view, a direct acknowledgement of his guilt. In other words, his statement can be classified as a plenary confession. Looking at that statement as a whole and without considering any other extrinsic facts, it suggested an inference that the accused had committed this murder, thus falling within the clear terms of s 17(2) of the Evidence Act 1950.

**[12]** In *Lemanit v Public Prosecutor* [1965] 2 MLJ 26, the Federal Court adopted this passage of Lord Guest in *Anandagoda v The Queen* [1962] 1 WLR 817, in accepting both plenary and non-plenary confessions as admissible under s 17 of the Evidence Act 1950. Lord Guest said:

> The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts. In this connection their Lordships consider that the view expressed by Gratiaen J in *Seyadu v Kins*, 'The test of whether an 'admission' amounts to a 'confession' within the meaning of s 17(2) must be decided by reference only to its own intrinsic terms' is correct. It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time of which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence.

**[13]** The confession was voluntarily made to SP4. There was no allegation that the accused had uttered it due to any inducement. In fact, no serious challenge was raised that the confession was actually made by the accused. The confession was made, in my view, under a feeling sheer remorse and manifested an acknowledgment that he had committed the act against the deceased. The fact that the accused said that he had not intended to do it, did not, in my considered view, make the confession exculpatory. Even if it was partly exculpatory, it may still be admitted under s 17(2) of the Evidence Act 1950, Augustine Paul in his book on *Evidence: Practice and Procedure*, (3rd Ed) made the following observation:

In *Public Prosecutor v Abdul Rashid & Ors* [1993] 3 SLR 794 (HC) Rubin JC (as he then was) said that what s 17(2) purports to import and what the Anandasoda decision purports to signify is that a confession need not be an unqualified expression of guilt and added at p 814:

> Under our law, it is no more than a person's statement admitting to his involvement in the offence charged in any manner or form. Be it minor or major, direct or indirect, explicit or inferential and whether in exculpation or in earnest, irrespective of its object, so long as the statement connects the accused in some way with the offence charged, it would be deemed a confession under s 17(2).

**[14]** The test for what amounted to a confession would therefore be that the statement would relate the accused in some way to the offence for which he is charged.

**[15]** Besides the confession of the accused, there were also circumstantial evidence, which if considered together with that confession point irresistibly to the guilt of the accused in perpetrating this murder.

**[16]** The accused was proved to be alone and the last person together with the deceased in the house. This fact was not in dispute since in his own evidence the accused had stated that he was at home the whole day long and when he left the house at 6pm that fateful evening his mother was well and alive in the house. SP3 in her evidence had also stated that she called home at 5pm and the accused informed her that their mother was then sleeping.

**[17]** According to the commentary in *Ratanlal & Dhirajlal's Law of Crimes* (p 1425), 'the fact that the accused and the deceased were 'last seen together' is a circumstance of an incriminating nature against the accused — but the mere fact that the accused was last seen together with the deceased does not necessarily lead to the irresistible inference that he had committed the crime.' It cannot therefore be the sole basis for a conviction. However, taken together with his own confession, the court may make an inference of his guilt (see *State v Shaik Mazhar* AIR 2001 SC 2427).

**[18]** There were other circumstances found in the narration of the prosecution's case which brought this court, by irresistible inference, that it was the accused who murdered his mother. When SP4 arrived at the house he saw the accused coming out of the bathroom clad only in a towel. The accused had shouted to SP4 not to make any noise. It may also be pertinent to note that at about 5–6pm, SP2, the neighbour, had heard noises from the accused's house, although it was not explained what the noises were. Later, when they both left the house the accused told SP4 not to do anything and pretend that SP4 had not seen anything. This peculiar conduct of the accused immediately after the recovery of the deceased lying in a pool of blood is most peculiar and suspicious to say the least. I had taken this as one of the circumstantial evidence, which taken together with the other facts and circumstances have the cumulative effect of bringing home the reasonable and irresistible inference that the accused had committed the murder.

**[19]** No motive was shown by the prosecution for this needless murder. However in law, motive is not an essential ingredient for this offence (see *Dato' Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232). The prosecution had also failed in its attempt to admit as evidence the cautioned statement of the accused, after this court had held a voire dire to determine its voluntariness.

**[20]** Dr Shahrom Abdul Wahid (SP9), a forensic expert at the Pathology Department, UKM, undertook a post mortem examination on the deceased on the morning of 6 October 2000. He found 55 wounds consisting of abrasions and lacerations of various degrees on the dead body. There were also defence wounds on the forearms. The injuries were a result of blows to the body using a blunt object. The injuries to the deceased's head were fatal and SP9 opined that those injuries were consistent with a homicidal attack. The cause of death was determined as 'head injury due to multiple blunt trauma'. SP9 also visited the scene of the crime when the deceased's body was still there. He saw the blood stains on the floor, walls and the bed. He found the deceased head to be in a big pool of blood suggesting that the deceased had been beaten several times on the head and that the injuries to the head were serious. SP9 also testified that the blood stains on the walls were that of spatters and sprays, the latter being the result of incised wounds with a sharp object. The estimated time of death was between 4pm till 9pm on 5 October 2000. This court accepted the opinion of SP9 and concluded that the deceased was brutally attacked with a blunt instrument, and succumbed to her wounds, notably those to her head.

**[21]** Looking at the wounds from the post mortem photographs (P4) and after considering SP9's testimony, this court found that the accused had intended to cause his mother's death when he inflicted those injuries upon her. His act fell within sub-sections (b), (c) and (d) of s 300 of the Penal Code which states:

> Culpable homicide is murder —
>
> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
>
> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
>
> (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

**[22]** There was no evidence of any provocation in the instant case. As such, upon a maximum evaluation of the evidence, the prosecution had successfully proven a prima facie case against the accused which this court had considered following the principle laid down in the recent Federal Court case of *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 which stated the following principle and test:

> As the accused can be convicted on the prima facie evidence it must have reached a standard which is capable of supporting a conviction beyond a reasonable doubt. However it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt...

> The test at the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a *prima facie* case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case of the prosecution. If there is any such doubt, there can be no *prima facie* case.

**[23]** The accused chose to give sworn testimony in his defence. The accused stated that he left the house on that evening, at 6pm and that the deceased was then still at home, alive. He said that SP4 was also at home when he went out but on his return at 7.45pm SP4 was no longer there. This matter was however never put to SP4 during his cross examination, and was in direct contradiction with the evidence of SP4 who said that he went over to the house after work at 6pm. As such, this court rejected this evidence as a recent invention, an afterthought (see *Public Prosecutor v Lin Lian Chen* [1992] 2 MLJ 561). The weight of such evidence must necessarily be diminished (see *Alcontara a/l Ambrose Anthony v Public Prosecutor* [1966] 1 MLJ 209). Under cross examination by the learned deputy public prosecutor, the accused denied that he had attacked the deceased as a result of a quarrel. He also denied that he had a shower before leaving the house, and that he was surprised to see SP4 in the house when he came out of the bathroom. He further denied that he told SP4 on what had happened.

**[24]** There was nothing in the defence which merits any consideration as a defence that could raise a reasonable doubt in the prosecution's case. In his testimony, the accused had not adverted to his confession, save for a total denial. He also did not refer to the telephone conversations he had with his sister, SP3 and to the fact that he had told SP3 that the deceased had vomited a lot of blood. A total appraisal of the accused's evidence shows nothing more than a bare denial which in law is not a true defence. The duty now on the accused is only to cast a reasonable doubt on the prosecution case; he is not required to prove his innocence (see *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169). This is now the question that this court needs to address, even when disbelieving the story of the accused (*Mat v Public Prosecutor* [1963] MLJ 263). In the instance case however there was no explanation forthcoming to even consider whether it had raised a reasonable doubt on the prosecution's case.

**[25]** Although the burden of proof in a criminal trial lies throughout on the prosecution in bringing home a conclusion that it had proven its case beyond a reasonable doubt, the accused, if called upon to his defence bears the evidential burden of casting that doubt. Thus, if for instance, he chose to merely remain silent, then having found a *prima facie* case which has been evaluated on a maximum evaluation test, the court may, without more, conclude that the prosecution has successfully proven its case beyond a reasonable doubt. The Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301, states the law in the following way (at p 316):

> Proof beyond reasonable doubt involves two aspects. While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence closed its case. Therefore a case can be said to

have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided by s 182A(1) of the Criminal Procedure Code, That would normally be the position where the accused has given evidence.

**[26]** This aspect of proving a case beyond a reasonable doubt has remained steadfast over the years. Over 50 years ago, in the Court of Appeal in *Chan Chwen Kong v Public Prosecutor* [1962] MLJ 307 enunciated the same principle in the following words of Thomson CJ:

In most criminal cases, there is at some stage an onus of a sort upon the accused person. Once the prosecution produces evidence which if believed would support a conviction there is a tactical onus on the accused person either to produce evidence on his own or to point to something in the prosecution evidence that at the very lowest make the trier of fact less than sure of any conclusions he might otherwise be prepared to base upon the prosecution evidence. If he fails to discharge that tactical onus he will be convicted. That is very true.

**[27]** For these reasons, this court had found that the prosecution had, at the end of the trial, succeeded in discharging its legal burden of proving its case beyond a reasonable doubt; and that the defence had not shed any reasonable doubt on the prosecution's case. The accused person was found guilty and convicted on the charge. He shall suffer the sentence of death by hanging as provided by s 302 of the Penal Code and s 277 of the Criminal Procedure Code.

*Accused found guilty and sentenced to death.*

Reported by Sally Kee